

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
17 EHR 00763

TREX PROPERTIES LLC  Petitioner,  v.  NC DEPARTMENT OF ENVIRONMENTAL QUALITY, DIVISION OF WASTE MANAGEMENT  Respondent.	<b>SETTLEMENT AGREEMENT</b>
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The North Carolina Department of Environmental Quality, Division of Waste Management, Hazardous Waste Section (the "Section") and Trex Properties LLC ("Trex"), a Missouri limited liability company, enter into this Settlement Agreement in order to amicably resolve matters in controversy between them in the above referenced contested case fully and finally. The Section and Trex shall be referred to collectively herein as the "Parties."

#### **BACKGROUND**

WHEREAS, Trex is the owner/operator of a hazardous waste facility located at 3114 and 3124 Cullman Avenue in Mecklenburg County, North Carolina (the "Facility"). The Facility is subject to State of North Carolina Division of Waste Management Hazardous Waste Management Permit No. NCD 049 773 245 R2 (the "Permit"), issued pursuant to the Resource Conservation and Recovery Act ("RCRA"), 42 USC 6901 et seq., and the North Carolina Solid Waste Management Act, N.C.G.S. 130A Article 9 and the rules promulgated thereunder and codified in Subchapter 13A of Title 15A of the North Carolina Administrative Code (the "Rules"), which Rules incorporate by reference the federal regulations, 40 CFR 239 et seq.,

issued pursuant to RCRA. The Solid Waste Management Act and the Rules are referred to collectively herein as the "State Hazardous Waste Program."

WHEREAS, the Rules, 15A NCAC 13A .0109, incorporating by reference 40 CFR 264.101, and the Permit require Trex to prepare a remedial strategy and cost estimate for the completion of any corrective action required under the Permit, and to provide financial assurance for the amount of the estimate.

WHEREAS, Trex has established a trust fund as the financial assurance mechanism, Wells Fargo Bank National Association trust account No. 46622800 (the "Trust"). As of March 31, 2017 the amount in the Trust was \$1,778,486.02 (the "Trust Amount").

WHEREAS, on July 15, 2016, Trex provided to the Section a remediation cost estimate (the "Cost Estimate"), entitled Final Cost Estimate for Remediation, for the Facility.

WHEREAS, by letter dated January 25, 2017, the Section notified Trex that the Cost Estimate submitted pursuant to the Permit was not approved.

WHEREAS, on February 7, 2017, Trex filed a Petition for a Contested Case Hearing (the "Petition"), 17 EHR 00763, contesting the Section's decision set out in the above letter.

WHEREAS, the Parties participated in informal settlement discussions over the course of several weeks. Based on information presented as a result of those discussions, and in order to avoid the cost and delay of litigation, the Section and Trex have agreed to the terms below.

### **TERMS OF AGREEMENT**

1. This Settlement Agreement is a negotiated compromise between the Parties.
2. The Section agrees that the Trust Amount (\$1,778,486.02) satisfies Trex's financial assurance requirement under the Rules and the Permit, subject to cost estimate updates as provided for by the Permit, the Rules, and this Settlement Agreement, and shall remain in the Trust until the first adjustment of the Trust as provided by this Settlement Agreement.
3. The Parties agree the Trust shall be redesignated for corrective action only.
4. Trex shall initiate in situ treatment of contaminated groundwater at the Site as described in Section 2.3 of the July 15, 2016 Final Cost Estimate for Remediation, as soon as is feasible after use of the land north of the Facility for the Blue Line Rail construction project is discontinued. Trex shall provide to the Section within two hundred seventy (270) days of completion of the in situ treatment, a report regarding the data resulting from the injection process using FeEDTA as activator for sodium persulfate reagent (activated persulfate). If at that time the Section reasonably determines that suitable progress is not being made using Fe EDTA, then Trex shall within thirty (30) days of notification by the Section adjust the cost estimate to reflect the use, where necessary, of an alternative reagent activator reasonably acceptable to the Section, and shall provide financial assurance for such cost as provided in this Settlement Agreement, the Permit, and the Rules.
5. The Section agrees to consider adjusting the Cost Estimate, except as provided for in Paragraph 4, above, every six months, but not more frequently, upon submission by Trex of a revised estimate (the "Adjusted Cost Estimate"). Trex shall submit the next revised estimate by

no sooner than six months from the date of execution of this Agreement. The Section shall respond to such revised estimates within a reasonable time either approving the revised estimate or specifying any costs with which it disagrees and its opinion regarding the appropriate cost.

6. If the Adjusted Cost Estimate agreed upon by the Parties is less than the Trust Amount, Trex may request to withdraw the excess amount, and the Section shall approve such withdrawal, as provided for by the Permit, the Rules, and this Settlement Agreement. If the Adjusted Cost Estimate is greater than the Trust Amount, Trex shall, within sixty (60) days after the approved Adjusted Cost Estimate, provide financial assurance for the Adjusted Cost Estimate as required by the Permit, the Rules, and this Settlement Agreement.

7. The Section agrees that Trex may apply for risk based limits for the corrective action according to applicable statutory and regulatory procedures and criteria.

8. Trex expressly waives its right to an administrative hearing on the Petition. Within ten (10) days of the full execution of this Settlement Agreement, Trex shall file with the Office of Administrative Hearings a Notice of Dismissal with Prejudice, withdrawing its Petition for a Contested Case Hearing in *Trex Properties LLC, v. N.C. Department of Environmental Quality, Division of Waste Management*, 17 EHR 00763.

9. Nothing in this Settlement Agreement shall restrict the Section's authority to inspect the Facility and take enforcement action against Trex for any violations of the State Hazardous Waste Program. It is further understood that Trex may contest any subsequent enforcement action based on allegations of violations, or any other action of the Section affecting

Trex's rights or property, to the extent such right is provided in Chapter 130A of the North Carolina General Statutes.

10. Trex and the Section agree that each shall bear its own costs related to any disputes covered by this Settlement Agreement. Neither Trex nor the Section shall apply for attorney fees or costs under any rule or law, and neither shall be liable for any attorney fees, costs, or expenses incurred by the other with respect to this controversy, except as otherwise provided in this Settlement Agreement.

11. Trex and the Section agree that the consideration for this settlement is in the promises contained herein, that this Settlement Agreement contains the whole agreement between them, and that there are no understandings or agreements, verbal or otherwise, regarding this Settlement Agreement except as expressly set forth herein.

12. This Settlement Agreement is contractual in nature and not just a recitation of terms. The language of this Settlement Agreement shall be construed, enforced, and governed by the laws of the State of North Carolina.

13. Each provision of this Settlement Agreement is intended to be severable, and if any provision is held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect or impair any other provision of this Settlement Agreement, but this Settlement Agreement shall be construed as if such invalid, illegal, or unenforceable provision had not been contained therein.

14. This Settlement Agreement shall be binding upon and inure to the benefit of the assigns, heirs, executors, and administrators of Trex and to the Section, its officials, managers,

employees, assigns, predecessors, and successors in function.

15. This Agreement shall be binding upon the Parties upon execution by the undersigned. The Agreement becomes effective on the last date of the signatures of the undersigned.

16. The corporate officer signing on behalf of Trex hereby warrants that he is competent to enter into this Settlement Agreement, that he has authority to enter into this Settlement Agreement on behalf of Trex, and that no court or tribunal of competent jurisdiction has found him to be incompetent or otherwise incapable of handling his business affairs or entering into a binding agreement or contract.

17. The undersigned representative of Trex hereby acknowledges that he has read this Settlement Agreement, conferred with his attorney or had the opportunity to confer with an attorney, fully understands the contents of the Settlement Agreement, consents to the settlement of claims on the terms set forth herein, and does so in reliance upon his own judgment and the advice of his attorney, and not in reliance on any other representations or promises of the Section, its representatives, or its attorneys.

**THE PARTIES ACKNOWLEDGE THAT EACH HAS CAREFULLY READ THIS ENTIRE AGREEMENT AND FULLY UNDERSTANDS ITS CONTENTS AND ITS LEGAL AND BINDING EFFECT. EACH PARTY FURTHER ACKNOWLEDGES THAT EACH MAKES A KNOWING AND VOLUNTARY WAIVER OF ITS RIGHTS IN EXCHANGE FOR THE CONSIDERATION SPECIFIED IN THIS AGREEMENT.**

**\*\* REMAINDER OF PAGE INTENTIONALLY LEFT BLANK \*\***

IN WITNESS WHEREOF, this Settlement Agreement is executed in duplicate originals:

FOR THE NORTH CAROLINA DEPARTMENT  
OF ENVIRONMENTAL QUALITY:

Julie S. Woodsley  
Julie S. Woodsley  
Chief, Hazardous Waste Section  
Division of Waste Management

Date

NORTH CAROLINA  
County of WAKE

I, Kelly B. Galantis, a Notary  
Public for said County and State, do hereby certify  
that Julie S. Woodsley  
personally appeared before me this day, is  
personally known to me or provided official  
identification in the form of  
Personally Known, and acknowledged  
the due execution of the foregoing instrument.

Witness my hand official seal, this the 3 day  
of May,  
2017.

Kelly B. Galantis  
Notary Public

(Official Seal)

My Commission expires:

KELLY B. GALANTIS  
Notary Public  
Johnston County, NC  
My Commission Expires 8-27-18

Kelly B. Galantis  
Notary Public  
Johnston County, NC  
My Commission Expires 8-27-18

FOR Trex Properties LLC:

Michael J. Roberts  
Name MICHAEL J. ROBERTS  
Title AUTHORIZED REP.  
Trex Properties LLC

Date

State of MISSOURI  
County of ST. LOUIS

I, Rebecca Lydon, a Notary  
Public for said County and State, do hereby certify  
that MICHAEL J. ROBERTS  
personally appeared before me this day, is  
personally known to me or provided official  
identification in the form of  
MISC, and acknowledged  
the due execution of the foregoing instrument.

Witness my hand official seal, this the 1 day  
of May,  
2017.

Rebecca Lydon  
Notary Public

(Official Seal)

My Commission expires:



REBECCA LYDON  
My Commission Expires  
November 1, 2017  
St. Louis County  
Commission #13540330